

Before the  
Administrative Hearing Commission  
State of Missouri



DEPARTMENT OF HEALTH & SENIOR  
SERVICES, BUREAU OF EMERGENCY  
MEDICAL SERVICES,

Petitioner,

vs.

ERIC HINSON,

Respondent.

No. 13-1811 DH

**DECISION**

Eric Hinson's EMT-P license is subject to discipline because he pled guilty to the crimes of mail fraud and tax evasion.

**Procedure**

On October 17, 2013, the Department of Health & Senior Services, Bureau of Emergency Medical Services ("the Department") filed a complaint seeking to discipline Hinson. On December 11, 2013, Hinson was personally served with a copy of the complaint and our notice of complaint/notice of hearing. He filed an answer on January 9, 2014. The Department filed a motion for summary decision ("the motion") on February 11, 2014. We notified Hinson that he should file any response by February 27, 2014. On February 26, 2014, Hinson filed a letter stating that he agreed to surrender his license.

The Department relies on its own records regarding Hinson's licensure, an affidavit from the Bureau Chief for the Bureau of Emergency Services, and certified copies of criminal records. Although in his answer Hinson denied many of the allegations in the complaint, he made no substantive response to the statement of facts in the Department's motion, nor did he provide any admissible evidence to counter those facts. Therefore, the following findings of fact are undisputed. 1 CSR 15-3.446(6)(B).<sup>1</sup>

### **Findings of Fact**

1. Hinson is licensed by the Department as an emergency medical technician-paramedic ("EMT-P"). Hinson's license was current and active at all relevant times. It expires on October 31, 2016.
2. Hinson was employed by the St. Clair, Missouri, Fire Protection District ("the District"). He was elected to the Board of Directors for the District in 1997, and became treasurer of the District in 1999.
3. In January 2011, Hinson became the fire chief for the District. He continued to serve as treasurer.
4. Hinson was issued a credit card to make authorized purchases for the District. He used the credit card to pay for family vacations to Hawaii and Florida, and for personal items such as sporting goods, restaurant meals, and entertainment expenses.
5. Hinson also wrote checks on the District's checking account to pay for his own personal expenses such as a pickup truck, furniture, and tractor parts. He mailed one of these checks, a check for \$35,846.12 to Ford Motor Credit Company, through the United States mail.
6. Hinson altered general ledger entries in the District's QuickBooks program to conceal his fraudulent transactions.

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<sup>1</sup> All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

7. From 2006 to 2011, Hinson diverted approximately \$593,236.42 in District funds for his own use.

8. During these years, Hinson also filed false tax returns in which he understated his income. Specifically:

- a. On Hinson's 2006 income tax return, he reported his taxable income as \$49,593.00 and the amount of tax due and owing as \$4,681.00. In fact, his taxable income was \$158,305.00, upon which he owed tax in the amount of \$33,729.00.
- b. On Hinson's 2007 income tax return, he reported his taxable income as \$51,756.00 and the amount of tax due and owing as \$4,984.00. In fact, his taxable income was \$180,344.00, upon which he owed tax in the amount of \$39,489.00.
- c. On Hinson's 2008 income tax return, he reported his taxable income as \$55,342.00 and the amount of tax due and owing as \$6,496.00. In fact, his taxable income was \$124,445.00, upon which he owed tax in the amount of \$39,489.00.
- d. On Hinson's 2009 income tax return, he reported his taxable income as \$50,452.00 and the amount of tax due and owing as \$5,723.00. In fact, his taxable income was \$121,925.00, upon which he owed tax in the amount of \$39,489.00.
- e. On Hinson's 2010 income tax return, he reported his taxable income as \$51,724.00 and the amount of tax due and owing as \$5,921.00. In fact, his taxable income was \$182,085.00, upon which he owed tax in the amount of \$39,227.00.

9. On January 9, 2013, a six-count indictment against Hinson was filed in the United States District Court for the Eastern District of Missouri, charging him with one count of mail fraud and six counts of tax evasion.

10. On February 6, 2013, Hinson pled guilty to all counts in the indictment. He was sentenced to imprisonment in the United States Bureau of Prisons to six concurrent terms of

thirty-five months for each count. He was also assessed \$600 and ordered to make restitution in the amount of \$615,298.00.

11. Hinson began serving his prison sentence on July 26, 2013.

### **Conclusions of Law**

We have jurisdiction to hear this case. §§ 621.045 and 190.165.2.<sup>2</sup> The Department has the burden of proving that Hinson has committed an act for which the law allows discipline. *See Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

Section 190.165 provides that the license of an emergency medical technician may be disciplined for the following:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate, permit or license required by sections 190.100 to 190.245 **or any person who has failed to renew or has surrendered his or her certificate**, permit or license for failure to comply with the provisions of sections 190.100 to 190.245 or any lawful regulations promulgated by the department to implement such sections. Those regulations shall be limited to the following:

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(2) Being finally adjudicated and found guilty, or having entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to sections 190.100 to 190.245, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

(Emphasis added). Thus, Hinson's surrender of his license does not deprive us of jurisdiction.

Regulation 19 CSR 30-40.365 states:

(2) The department may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate, permit or license

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<sup>2</sup> Statutory references are to the RSMo Supp. 2013, unless otherwise indicated.

required by the comprehensive emergency medical services systems act or any person who has failed to renew or has surrendered his or her certificate, permit or license for failure to comply with the provisions of the comprehensive emergency medical services systems act or for any of the following reasons:

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(B) Being finally adjudicated and found guilty, or having entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any activity licensed or regulated pursuant to the comprehensive emergency medical services systems act, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

#### Cause for Discipline

Hinson pled guilty to mail fraud under 18 U.S.C. § 1341:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses . . . for the purpose executing such scheme or artifice or attempting to do so, places in any post office or authorized depository for mail matter . . . any matter or thing whatever to be sent or delivered by the Postal Service . . . shall be fined under this title or imprisoned not more than 20 years, or both.

and tax evasion under 26 U.S.C. § 7201:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony, and upon conviction thereof, shall be fined no more than \$100,000 . . . or imprisoned not more than 5 years, or both[.]

The Department argues that both offenses are 1) reasonably related to the qualifications, functions, or duties of an EMT; 2) offenses an essential element of which is fraud and dishonesty; and 3) offenses involving moral turpitude.

#### A. Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11<sup>th</sup> ed. 2004). The Department has pointed us to no statute or regulation defining the duties of an EMT-P. It relies on the affidavit of the chief of the Bureau of Emergency Services to support its argument that Hinson's crimes are reasonably related to the qualifications, functions or duties of an EMT-P. In the affidavit, Lester Jobe represents that EMTs are responsible not only for the care of their patients, but for safeguarding the property on their persons and in their homes. He also avers that EMTs must be trusted not to steal from an ambulance, and they must complete records accurately and truthfully after ambulance runs and not alter records to cover up fraudulent activity such as stealing medication or a patient's money or property.

The Department points out that Hinson stole, altered records, and did not report his income truthfully on his tax returns. In essence, the Department is arguing broadly that any crimes of dishonesty are reasonably related to the qualifications, functions, or duties of an EMT.

Section 190.142 allows the Department to promulgate rules pertaining to all levels of EMT licenses. 19 CSR 30-40.342 further sets forth the information a person must include in an application to be licensed as an EMT. We find no references in either to honesty, good moral character, or accurate record keeping. We do not believe Hinson's crimes are related to the qualifications of an EMT-P.

However, we agree that it is important that employers and patients be able to trust EMTs not to steal from them, to complete records accurately, and not to alter records. Hinson violated his employer's trust in all of these ways. We agree that his crimes are reasonably related to the functions and duties of an EMT.

#### B. Essential Element

An essential element is one that must be proven for a conviction in every case. *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961). The

Department argues that dishonesty is an essential element of both tax evasion and mail fraud, and fraud is an essential element of the latter. Based on our review of 18 U.S.C. § 1341, we agree that both are essential elements of mail fraud. Whether dishonesty is an essential element of tax evasion under 26 U.S.C. § 7201 is a closer question: a person might honestly, if wrongfully, attempt to “defeat a tax” for a principled reason.

We have not found a Missouri case addressing the question of whether dishonesty is an essential element of tax evasion. The court in *Atkins* held that neither fraud nor dishonesty was an essential element of the misdemeanor crime of willful failure to file a tax return, which is not precisely the same as the willful attempt to “evade or defeat” tax, as specified by 26 U.S.C. § 7201. But in this Commission’s previous decisions, we have drawn this conclusion. *See State Bd. of Accountancy v. Berry*, no. 12-1987 AC (2013); *State Bd. of Podiatric Medicine v. Marston*, no. 08-1737 CP (2009); *State Bd. of Chiropractic Examiners v. Dailey*, no. 91-1804 (1992). And, after reviewing cases from other states, we conclude that the weight of authority supports the Department’s position. *See Board of Professional Responsibility of Supreme Court of Tennessee v. Cowan*, 388 S.W.3d 264, 268-69 (Tenn., 2012) (concluding that a “person who willfully attempts in any manner to defeat or evade any tax, 26 U.S.C. § 7201, necessarily engages in “intentional conduct involving dishonesty ... that seriously adversely reflects on a lawyer's fitness to practice law.” ); *Commonwealth v. Vitale*, 664 A.2d 999, 1003–04 (1995)(witness may be impeached with evidence of a conviction under 26 U.S.C. § 7201 because that crime requires an attempt to evade or defeat a tax, which implies cheating or defrauding the government, and, as such, involves dishonesty); and *Matter of Humphreys*, 880 S.W.2d 402, 408 (Tex., 1994) (by definition, a violation of 26 U.S.C. § 7201 “involve[s] intentional dishonesty for purposes of personal gain.”)

We conclude that dishonesty is an essential element of the crime of tax evasion under 26 U.S.C. § 7201, and that both fraud and dishonesty are essential elements of mail fraud under 18 U.S.C. § 1341.

### C. Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App., W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

*Id.* at 725. (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

Under the *Brehe* framework, mail fraud is a crime that necessarily involves moral turpitude. Income tax evasion is a category 3 crime, but we have little difficulty here in



concluding that Hinson's income tax evasion was a crime of moral turpitude. There is no suggestion that Hinson misreported his income for any reason other than greed and an attempt to cover up his embezzlement from the District. We find his crimes are ones of moral turpitude.

D. Summary of Cause for Discipline under § 190.165.2(2)

We conclude that the crimes of mail fraud and tax evasion are reasonably related to the functions and duties of an EMT-P. They are also crimes involving moral turpitude. Dishonesty is an essential element of both, and fraud is an essential element of mail fraud. There is cause for discipline under § 190.165.2(2) and under 19 CSR 30-40.365(2)(B).

**Summary**

There is cause to discipline Hinson's EMT-P license under § 190.165.2(2) and 19 CSR 30-40.365(2)(B). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on March 7, 2014.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner